

CHAPTER V – SUBDIVISION REVIEW CRITERIA

Chapter Overview

This chapter addresses the criteria by which preliminary plat applications are approved, denied, or approved with conditions in accordance with the Montana Subdivision and Platting Act, [Title 76, Chapter 3, MCA \(“MSPA”\)](#). This chapter also addresses the criteria for determining whether amendments to an application are material and warrant additional information and procedural steps. This chapter also provides review criteria for final plat applications, variances, phased developments, and extensions of the preliminary approval period.

V-A Preliminary Plat Application Review Criteria

1. Information to be Considered

The governing body’s decision to approve, conditionally approve, or deny a proposed preliminary plat application shall be based on review of the application, preliminary plat, applicable environmental assessment, public hearing and comment, planning board recommendation, staff report, and other information submitted or prepared in the review of the application. As per [76-3-608\(10\), MCA](#), findings of fact by the governing body concerning whether the development of the proposed subdivision meets the requirements of these regulations and the MSPA must be based on the record as a whole.

2. Review Criteria

The basis for the governing body’s decision to approve, conditionally approve, or deny the proposed subdivision shall be whether the subdivision meets the requirements of the MSPA and these regulations. The findings of fact shall include an evaluation of the following criteria.

a) Compliance with These Regulations

The review is based on the subdivision regulations in place at the time the application is determined to contain sufficient information for review. Subdivisions that do not comply with the following standards shall be denied, unless the requirement is made a condition of approval or a variance is granted.

- i. Design Standards – Compliance with provisions of the design standards in Chapter VII is required.
- ii. Special Provisions for Condominiums, Townhouses, Townhomes, and RV and Mobile Home Parks - Condominiums, townhouses, townhomes, and RV and mobile home parks shall meet the additional design standards and requirements in Chapter III and as referenced in other chapters for these types of subdivisions.
- iii. Compliance with Zoning – All subdivisions must demonstrate they are designed to comply with applicable zoning.
- iv. Compliance with Other Regulations – All subdivisions shall demonstrate compliance with other applicable regulations including ARMs for sanitation and water supply, floodplain regulations, etc.
- v. Conformance with Adopted Plans – Subdivisions must substantially comply with adopted plans such as a growth policy, transportation plan, or community wildfire protection plan. Because plans are not regulatory, no variance for non-conformance is required, nor can denial or a condition of approval be based solely on plan conformance.

b) Compliance with the Subdivision Review Procedure ([76-3-608\(3\)\(b\)\(iii\), MCA](#))

All preliminary plat applications shall be reviewed in compliance with the procedures established in these regulations and the MSPA. The record shall demonstrate the review processes and timeframes in Chapter IV were followed. All conditional approvals shall include a timeframe for final plat filing.

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- c) Compliance with Survey Requirements ([76-3-608\(3\)\(b\)\(i\), MCA](#))
The preliminary plat shall comply with the survey requirements in Part 4 of the MSPA.
- d) Provision of Legal and Physical Access ([76-3-608\(3\)\(d\), MCA](#))
All preliminary plat applications shall demonstrate how legal and physical access is to be provided to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.
- e) Provision of Utility Easements ([76-3-608\(c\), MCA](#))
The preliminary plat application shall provide easements within and to the proposed subdivision for the location and installation of any planned utilities.
- f) Impacts to Agriculture, Agriculture Water User Facilities, Local Services, the Natural Environment, Wildlife, Wildlife Habitat, and Public Health and Safety ([76-3-608\(3\)\(a\), MCA](#))
The governing body shall identify any impacts it determines to be potentially significant and adverse to agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety. The criteria for determining significant adverse impacts are the criteria adopted in the [\[INSERT THE NAME OF THE CITY OR COUNTY\]](#) Growth Policy as required by [76-1-601\(3\)\(h\), MCA](#).

3. Limitations

- a) Prohibition on Requiring Capital Facilities for Education ([76-3-510, MCA](#))
Although the governing body may require the subdivider to pay or guarantee payments for part or all of the costs of extending capital facilities related to public health and safety, the costs of constructing or extending capital facilities related to education may not be imposed on the subdivider.
- b) Restrictions on Conditional Approval or Denial for Water and Sanitation ([76-3-608\(6\), MCA](#))
The governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided in the preliminary plat application or on public comment related to the provided sanitation information only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.
- c) Limitation on Waivers of the Right to Protest Improvement Districts ([76-3-608\(7\), MCA](#))
The governing body may not require as a condition of subdivision approval that a property owner waive a right to protest the creation of a special improvement district or a rural improvement district for capital improvement projects that does not identify the specific capital improvements for which protest is being waived. A waiver of a right to protest may not be valid for a time period longer than 20 years after the date the final subdivision plat is filed with the county clerk and recorder.
- d) Restriction on Encroachment onto Adjoining Private Property ([76-3-608\(8\), MCA](#))
The governing body may not approve a proposed subdivision if any of the features and improvements of the subdivision encroach onto adjoining private property in a manner that is not otherwise provided for under the Montana Sanitation in Subdivisions Act or these regulations or if the well isolation zone of any proposed well to be drilled for the proposed subdivision encroaches onto adjoining private property unless the owner of the private property authorizes the encroachment. For the purposes of this section, “well isolation zone” has the meaning provided in [76-4-102, MCA](#).
- e) No Denial Solely for Education or Wildland Urban Interface ([76-3-608\(1\), MCA](#))
The governing body may not deny a proposed subdivision solely for impacts to educational services or designation or based solely on parcels within the subdivision having been designated as urban-wildland interface parcels under [76-13-145, MCA](#).

- f) No Delay or Denial Based on Failure of Public Utility or Agency to Comment ([76-3-504\(1\)\(i\), MCA](#))

The governing body may not delay a decision on the preliminary plat application past the review period time limits provided in these regulations and may not deny a preliminary plat application due to failure of any public utility or agency to provide comments on the application.

V-B Final Plat Application Review Criteria

1. Information to be Considered

The governing body's decision to approve or deny the final plat application shall be based on an evaluation of compliance with conditions of preliminary approval, the final plat application including the plat and supplements, the administrator's written report, review of any legal agreements or contracts by the city/county attorney, and other information submitted or prepared in the review of the final plat application.

2. Review Criteria

A final plat shall not be approved for filing unless the final plat application demonstrates compliance with the following criteria.

- a) No Material Change to the Preliminary Plat and Plans

There shall be no material changes to the approved preliminary plat and related materials except for the following circumstances:

- i. When changes are specifically required by conditions of approval. Material changes in the site layout, subdivision design, or to the plat for DEQ or other agency approval or other required permits do not constitute an exception unless a condition specifically authorizes the change.
- ii. If the administrator determines a condition of approval is illegal or impossible to comply with due to circumstances outside of the subdivider's control, economic hardship notwithstanding, the condition may be reviewed by the governing body through a public hearing with notice provided as per [76-3-605\(3\), MCA](#) in order to determine if the condition may be waived or amended.

Unless the change is one described in the two previous paragraphs, a final plat with a material change, as described below under Criteria for Amending Applications, shall be denied until it is brought into compliance or only has changes that are not material.

- b) Compliance with Conditions of Approval ([76-3-611, MCA](#))

The final plat application shall demonstrate compliance with all conditions of approval.

- c) Abstract of Title and Lienholders Consent ([76-3-612, MCA](#))

The subdivider shall submit with the final plat application a certificate of title abstracter dated within 30 days of receipt of the final plat application. The certificate shall show the names of the owners of record of the land to be subdivided and the names of lienholders or claimants of record against the land. The subdivider shall provide written consent to the subdivision by all owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land.

- d) Improvements Installed ([76-3-507, MCA](#))

All improvements required prior to final plat filing shall be completed and approved and/or certified as required under Chapter VIII. Improvements that are not essential to public health

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and safety may be secured with a Subdivision Improvements Agreement and financial guarantee as detailed in Chapter VIII.

- e) County Treasurer's Certification ([76-3-611\(2\), MCA](#))
The final plat shall include the county treasurer's certification that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.
- f) Examining Land Surveyor Approval ([76-3-611\(2\), MCA](#))
The governing body may require the final subdivision plat to be reviewed for errors and omissions in calculation and drafting by an examining land surveyor before recording with the county clerk and recorder. No final plat shall be recorded unless the plat includes a certificate of compliance signed by the examining land surveyor.

V-C Criteria for Amending Subdivision Applications

1. Applicability

Changes to a preliminary or final plat application after submittal triggers review as an amended application. Chapter IV "Subdivision Application and Review Process," identifies the steps to be taken when changes are made including:

- a) Amendments to the application during element review;
- b) Amendments to the application during sufficiency review;
- c) Amendments to the application after sufficiency but prior to governing body decision; and
- d) Amendments to the application after preliminary plat approval but prior to final plat approval. Please note no material changes are allowed after preliminary plat approval as per [76-3-611, MCA](#). The subdivider is advised that changes to the site layout for sanitation or other purposes can be considered a material change, even when such changes are required by an agency such as DEQ, that may issue an approval necessary for the subdivision.

2. Review Criteria for Material Change

If a subdivision application is determined to have a material change, the application may revert to an earlier stage in the review process. The criteria for determining if a material change has been made to an application are whether the change:

- a) Significantly alters the layout or design of the subdivision;
- b) Negatively impacts agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, or public health and safety in ways not previously identified or reviewed;
- c) Requires a variance from a design standard; or
- d) Significantly impacts other aspects of the subdivision in ways not previously identified or reviewed.

3. Examples of Material Change

The following are examples of potential material changes. These are examples only and not an exhaustive list.

- a) Lots – Change in configuration or increase in the number of lots;
- b) Access – Change of legal and physical access to one or more lots, relocation of road approaches, changes of access routes;
- c) Infrastructure - Changes to the types or locations of water or sanitation systems;
- d) Parkland or open spaces – Relocation of parkland or reduction in acreage, and
- e) Easements - Change in location, width, or purpose of easements.

V-D Criteria For Changes and Amendments to Final Plats

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1. Changes to Approved Final Plats Prior to Filing

No changes are allowed to an approved final plat prior to filing with the clerk and recorder.

2. Changes to Filed Final Plats

Changes that alter any portion of the filed must be made by filing an amended plat showing all alterations. The criteria for amending a final plat are the following:

a) Survey corrections

Survey Corrections shall be reviewed according to the survey requirements under Part 4 of the MSPA and do not require review as a subdivision. The governing body may also correct a final plat when it does not definitively show the location or size of lots or blocks or the location or width of any street or ally, as provided in [76-3-614, MCA](#).

b) Boundary Relocations and Aggregations of Lots in a Platted Subdivision

Boundary relocations and aggregations involving five or fewer lots within a platted subdivision shall be reviewed to determine if they qualify for an exemption under [76-3-207, MCA](#). Refer to Chapter II “Divisions of Land Exempt from Subdivision Review.”

c) All Other Changes to a Final Plat

All other changes must be reviewed as an amended subdivision following the process and other requirements for a major or minor subdivision under these regulations.

V-E Variance Review Criteria

1. Applicability

The governing body may grant variances from the requirements of Chapter VII Design and Improvement Standards when, due to characteristics of the land proposed for subdivision, strict compliance with the standards would result in undue hardship and would not be essential to the public welfare. A variance shall not be granted if it would have the effect of nullifying the intent and purpose of these regulations.

2. Criteria for Approval

The criteria for approving variances are:

- a) The variance will not be detrimental to public health, safety, or general welfare, or be injurious to adjoining properties;
- b) Due to the physical shape, surroundings, or topographical conditions of the property, strict compliance with the regulations will impose an undue hardship. Undue hardship does not include personal or financial hardship, or any hardship that is self-imposed;
- c) The variance will not cause a substantial increase in public costs;
- d) The variance will not place the subdivision in nonconformance with any adopted zoning regulations;
- e) The variance will not allow subdivision for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;
- f) The variance shall comply with specific provisions for variances as may be described in Chapter VII, Design and Improvement Standards, and
- g) The variance will not have the effect of nullifying the intent and purpose of these regulations.

3. Conditions of Approval

In granting a variance, the governing body may impose reasonable conditions to further the purposes of these regulations.

V-F Phased Development Review Criteria

1. Overall Phased Development Preliminary Plat Application

a) Information to be Considered

The governing body's decision to approve, conditionally approve, or deny a proposed overall phased development preliminary plat application shall be based on review of the application, preliminary plat, applicable environmental assessment, public hearing and comment, planning board recommendation, staff report, and other information submitted or prepared in the review of the application. As per [76-3-608\(10\), MCA](#), findings of fact by the governing body concerning whether the development of the proposed subdivision meets the requirements of these regulations and the MSPA must be based on the record as a whole.

b) Review Criteria

The basis for the governing body's decision to approve, conditionally approve, or deny a proposed overall phased development preliminary plat application shall be the same as the preliminary plat application review criteria provided in Ch. V-A(2) of this chapter. The findings of fact shall include an evaluation of the criteria.

2. Individual Phases

a) Information to be Considered

The governing body's decision to approve, conditionally approve, or deny an individual phase of a phased development shall be based on review of the application, preliminary plat, public hearing and comment, staff report, and other information submitted or prepared in the review of the application. As per [76-3-608\(10\), MCA](#), findings of fact by the governing body concerning whether the development of the proposed subdivision meets the requirements of these regulations and the MSPA must be based on the record as a whole.

b) Review Criteria

The basis for the governing body's decision to approve, conditionally approve, or deny an individual phase shall be:

- i. Each phase shall be in substantial conformance with the overall phased preliminary plat;
- ii. Each phase shall be reviewed and approved within the required timeframe;
- iii. Each phase shall comply with the subdivision regulations in effect on the date the overall phased development preliminary plat application was deemed sufficient for review;
- iv. Each phase shall contain fully functional systems of access, non-motorized facilities, stormwater management, fire suppression, potable water, wastewater treatment, parkland, and other infrastructure and services independent and without reliance on a future or subsequent phase; and
- v. Required improvements for all prior phases have been completed or secured with a subdivision improvements agreement and financial guarantee before commencement of a later phase.

3. Final Plat Review of Individual Phases

a) Information to be Considered

The governing body's decision to approve or deny the final plat application shall be based on an evaluation of compliance with conditions of preliminary approval, the final plat application including the plat and supplements, the administrator's written report, review of any legal agreements or contracts by the city/county attorney, and other information submitted or prepared in the review of the final plat application.

b) Review Criteria

The final plat of each individual phase shall be reviewed under the criteria provided in Ch. V-B(2), above.

V–G Criteria for Reviewing Preliminary Plat Approval Period Extension Requests

1. Information to be Considered

In considering whether to grant an extension to the preliminary plat approval period, the governing body shall consider the reasons for the request as explained in the subdivider's written request for an extension and shall consider the administrator's recommendation. The written request must be received no later than 40 days prior to the end of the preliminary plat approval period.

2. Criteria

a) Significant Changes in Regulations

The governing body shall consider whether subdivision, zoning, or other regulations have changed since the date of preliminary approval in ways that would make the preliminary plat application non-compliant if submitted today.

b) Significant Changes On or In the Vicinity of the Property

The governing body shall consider whether conditions on or in the vicinity of the property have changed significantly since the date of preliminary plat approval in ways that could impact public health, safety, and general welfare. Examples of significant changes include changes in traffic volumes and patterns, increased danger from wildfire or flooding, and changes in the ability of agencies or utilities to provide service to future subdivision occupants.

3. Time Periods

a) Extensions shall be no longer than three-year increments.

b) The total time period from preliminary plat approval until final plat filing shall not exceed 10 years, including extensions. This does not include phased developments.

4. Extension to be in Writing

Any mutually agreed-upon extension must be in writing, dated, and approved by the governing body with appropriate signature. The extension must be dated within the preliminary approval period.